

MINUTES

IDAHO COUNCIL ON INDIAN AFFAIRS

FEBRUARY 21, 2006

STATE CAPITOL BUILDING
SENATE MAJORITY CAUCUS ROOM
BOISE, IDAHO

(Approved by the Council)

In attendance were Senator Michael Jorgenson, Council Chairman; Coeur d'Alene Tribal Council Chairman Chief Allan, Council Vice-Chairman and representing the Coeur d'Alene Tribe; Fort Hall Business Council Vice-Chairperson Nancy Eschief Murillo, representing the Shoshone Bannock Tribes; Kootenai Tribal Council Chairperson Jennifer Porter, representing the Kootenai Tribe of Idaho; Nez Perce Tribal Executive Committee Chairperson Rebecca Miles, representing the Nez Perce Tribe; Senator Bert Marley; Representative Joe Cannon; Representative George Saylor; Lance Giles, representing Governor Dirk Kempthorne; and Paige Alan Parker of the Legislative Services Office. No representative of the Shoshone-Paiute Tribes was in attendance. Jason Walker of the Northwestern Band of the Shoshone Nation was present as an observer.

Also in attendance were Quanah Spencer, Margaret SiJohn, and Bill Roden representing the Coeur d'Alene Tribe; Russell Westerberg and Billy Barquin, representing the Kootenai Tribe; Mark Echohawk, William D. Edmo, Gary Gould and Bill Bacon, representing the Shoshone-Bannock Tribes; David Kerrick, representing the Nez Perce Tribe; Pam Eaton, representing the Idaho Retailers Association; Josephine Halfhide, a private consultant; Representative Elmer Martinez, representing District 29; Representative Mike Mitchell, representing District 7; Senate President Pro Tem Robert Geddes; Clay Smith, Idaho Attorney General's Office; and Mitch Silvers, representing United States Senator Mike Crapo.

Chairman Mike Jorgenson called the Council to order at 5:30 p.m. Following opening remarks by Chair Jorgenson and Vice-Chair Chief Allan, an invocation was given. **The minutes of the January 18, 2006, Council meeting were corrected as to spellings and titles and were approved upon the motion of Senator Marley and the second of Fort Hall Business Council Vice-Chairperson Murillo.** Chair Jorgenson noted that each Council member now had name tags before them and that only Council members should sit at the table. Mitch Silvers of Senator Crapo's office was recognized by the Chairman.

Clay Smith gave an overview of Public Law 83-280 regarding federal, state and tribal jurisdiction over matters occurring on Indian Country. Mr. Smith works for the Natural Resources Division of the Idaho Attorney General's Office. After a number of years in private

practice, Mr. Smith went to work for the Montana Attorney General in 1983 and soon became the Indian law specialist for that office. He came to work for the Idaho Attorney General in 2000. Mr. Smith has argued two (2) cases before the United States Supreme Court on Indian Law issues and is the editor for the Indian Desk Law Manual which is published for the Western States Attorney Generals.

P.L. 280 was passed in 1953 and, as amended, provides for mandatory jurisdiction of state courts to resolve specified types of disputes occurring in Indian Country for six (6) states. Formerly, states were precluded from exercising jurisdiction in Indian Country unless it was a non-Indian versus non-Indian matter. Otherwise, the federal courts or the tribal courts had jurisdiction. P.L. 280 removed this prohibition to state court jurisdiction for the six (6) mandatory states. P.L. 280 has both civil and criminal components.

Under P.L. 280 nonmandatory states, such as Idaho, could assert state court jurisdiction on a “pick and choose” basis through legislative action. Idaho did so in the early 1960's with regard to seven (7) areas specified in section 67-5101, Idaho Code. These areas are: compulsory school attendance; juvenile delinquency and youth rehabilitation; dependent, neglected and abused children; insanities and mental illness; public assistance; domestic relations; and operation and management of motor vehicles upon highways and roads maintained by the county or state, or political subdivisions thereof.

In 1968, Congress passed the Indian Civil Rights Act which gave the Secretary of the Interior the ability to retrocede state jurisdiction. This has not occurred.

According to Mr. Smith, the criminal jurisdiction conferred by P.L. 280 has not proven to be overly problematic. There is some dispute as to whether traffic infractions, such as speeding, are civil or criminal. In Idaho, an infraction is considered criminal and thus subject to state court jurisdiction. The civil component of P.L. 280 is more complex but has not received very much attention by the courts in the way of judicial opinions.

Fort Hall Business Council Vice-Chairperson Murillo asked Mr. Smith to discuss concurrent jurisdiction. Mr. Smith stated that notwithstanding the state jurisdiction conferred by section 67-5101, Idaho Code, the tribal courts also have jurisdiction over the same subject areas. He stated that there is the possibility for a conviction by both sovereigns for the same criminal offense. Ms. Murillo asked about whether Montana has retroceded its jurisdiction under P.L. 280. Mr. Smith replied that only with regard to criminal matters on the Flathead Reservation which occurred in the late 1990's.

Ms. Murillo then commented that both state and county law enforcement were exercising jurisdiction on Shoshone-Bannock Reservation roads and would like to see retrocession occur in Idaho. She noted that the Shoshone-Bannock Tribes never agreed to jurisdiction and that although the state asserts jurisdiction, it fails to provide rehabilitation services in such areas as juvenile delinquency. In such circumstances, the tribal court may enter orders but the state does not honor the orders. Mr. Smith declined to comment on these matters since they were outside

the scope of his area.

Ms. Murillo then deferred to Mark Echohawk for additional comments. Mr. Echohawk commented that for the tribes, section 67-5101, Idaho Code, means that Indians are sent off the Reservation for adjudication. Non-Indians would rightfully object to being haled into tribal courts. Indians feel the same about being required to appear before state courts; as such, this is an offense to sovereignty and self determination. In an historical context, P.L. 280 was passed in 1953, a time when the policy of the United States government was to abolish the Indian tribes and when there was a concern with lawlessness on the reservations. Since 1967, the policy behind P.L. 280 has been reputed and no Indian tribe has consented to state court jurisdiction over matters occurring on Indian Country. The historical context of P.L. 280 serves as the basis for the Shoshone-Bannock Tribes opposition.

Vice-Chair Allan commented that the P.L. 280 issue is huge. The fix needs to occur at the national level. The Coeur d'Alene Tribe has entered into a cross deputization agreement with Kootenai County to help address the issues of drug dealers moving onto the Coeur d'Alene Reservation, making it a "war zone," and the problem of Indian women being beat up by non-Indians. This cross deputization agreement has been a good fix for the time being. This is a touchy situation with regard to sovereignty, but it can be worked out.

Chairman Jorgenson agreed that P.L. 280 is an important issue which should be taken up at further Council meetings. Senate President Pro Tem Robert Geddes was introduced to the Council. Pro Tem Geddes commented that he appreciates the work being done by the Council.

Nez Perce Tribal Executive Committee Chairperson Rebecca Miles passed out materials and made a presentation to the Council on the history and culture of the Nez Perce Tribe. Ms. Miles noted that she had just been elected as the first woman chair of the Tribe's Executive Committee. Ms. Miles' written presentation is appended to these minutes. Ms. Miles also quoted from a law review article by Mary Wood, published in the 2004 Oregon Law Review, volume 83, issue 4, on the seventh Oregon state government - tribal summit. The cited law review article is appended to these minutes. Sam Penney, the Nez Perce Tribal Executive Committee Vice-Chair, assisted Ms. Miles.

Vice-Chair Allan commented that there should be an Idaho summit like those conducted in Oregon and Arizona. In response to Senator Marley's question, Vice-Chair Allan explained that a summit is an open-door communications session where the parties talk and work things out. Ms. Miles commented that she, as a representative of the Nez Perce Tribe, has been invited to summits in Oregon on several occasions. She also noted that Governor Batt met with the Idaho tribes at least quarterly. Nez Perce Tribal Executive Council Vice-Chair Penney commented that Governor Batt met with the Idaho tribes almost monthly in lieu of creating an office on Indian Affairs. Mr. Penney added that a summit could utilize experts to find common ground on such matters as P.L. 280 and the retrocession process. Ms. Murillo stated that a summit could be used to conduct treaty workshops and recommended that there be a summit with the Legislature and the Governor. Senator Marley commented that an added benefit of such

a summit would be to allow the different Idaho tribes to discuss matters among themselves.

Senator Marley moved the Council recommend to the Governor that a summit with the Idaho Indian Tribes be held to include the Governor, members of the Legislature, representatives of the relevant federal government agencies and other interested persons. Ms. Miles seconded the motion, which passed unanimously. Mr. Giles stated that Governor Kempthorne is always open to visit with tribal representatives and that such representatives should contact him to facilitate a meeting with the Governor.

Chairman Jorgenson stated that Legislative Services had been unable to obtain reliable data to present to the Council on the taxation issue. Better information should be available at the next Council meeting. Chairman Jorgenson also noted that every effort is being made to use the proper protocol and manner of address in the Council meetings and in the minutes and that rapport and dialog in the Council meetings are important.

With regard to the review of legislation pending before the Legislature, Chairman Jorgenson stated that the Council cannot demand that pending bills be brought before the Council. Until a bill is printed, it is private to its sponsor. Bringing a bill to the Council is a matter of courtesy and Legislators are not accustomed to bringing their bills to the Council.

Representative Cannon stated that he recently became a sponsor of a bill on fuel taxation (HB 661) which the Council did not hear about until it was presented to the House Transportation and Defense Committee and which may have caused concern. He became a sponsor of the bill in an effort to honor his commitment to the Council. He is no longer sponsoring the bill. He did not write the bill and does not have the authority to kill it.

Ms. Miles commented that the Council members need to think about the purpose of the Council. The Council has to start over each time there is a change in leadership, both the tribal representatives and those representing the state. She presented information obtained from Idaho Gas Prices.com which shows that the gasoline prices on the Nez Perce Reservation are slightly above other low-cost sellers.

Representative Sayler commented that trust is precious. Vice-Chair Allan commented that he is optimistic about the Council which is off to a great start and moving in the right direction. He stated that the tribes need to lay out their facts.

Ms. Murillo asked why HB661 is still moving forward since she thought there had been an agreement reached. Representative Cannon stated that he does not have authority to say what the Transportation Committee does. He is asking that the bill be put off for one (1) year as a “cooling off” period to allow the parties to work things out with regards to the IFTA problem, determine the condition of the road and determine who is funding road repairs and, thus, avoid a court battle. In exchange, he is asking that the tribes quit underselling their neighbors. In the interim, the tribes can keep their tax moneys.

Chairman Jorgenson stated that he thought an agreement had been reached in principal. Representative Cannon was under the impression that the Shoshone-Bannock Tribes were still thinking about it. Ms. Murillo stated that after discussing the matter with the tribes and legal counsel, the Shoshone-Bannock Tribes are in favor of the agreement.

Representative Sayler moved that the Council recommend to the House Transportation and Defense Committee that HB661 be held in the Committee for a one (1) year moratorium during which time the parties would be able to discuss and attempt to resolve the issues. Vice-Chair Allan seconded the motion. The motion passed without opposition vote.

Representative Cannon stated that the tribes and interested Legislators should attend and testify at the Committee hearing on the bill. Chairman Jorgenson observed that the issue is primarily between the Shoshone-Bannock Tribes and the bill drafters since the Northern Idaho tribes do not present a price differential issue, but that the negotiations need to include all the Idaho Indian Tribes since individual tribe sovereignty issues are at stake. Ms. Murillo stated that she thought that the agreement was to apply to all the tribes. Mr. Bacon stated that, based on his discussions with Representative Cannon, the issue involves only diesel being sold on the Shoshone-Bannock Reservation at approximately twenty-five (25) cents cheaper than nearby non-Indian sellers, due to the inability of the tribal station to charge tax according to the International Fuel Tax Agreement (IFTA). The truckers are given a form to fill out and pay the IFTA themselves. If the tribe could charge the IFTA, then its diesel fuel price would be similar to that of the non-Indian sellers. Representative Cannon stated that he did not fully understand the IFTA issue, but he concurred with Mr. Bacon's understanding.

Vice-Chair Allan noted that HB 656 is before the House Local Government Affairs Committee and deals with the composition of the Commission which addresses the clean-up of the Silver Valley. The bill seeks to expand the membership on the Commission by the addition of a city representative which would dilute the vote of the remaining members, including that of the Coeur d'Alene Tribe, and give the county increased representation. The Coeur d'Alene Tribe is monitoring the bill.

The next Council meeting is set for Wednesday, March 8, 2006, in the Senate Majority Caucus Room in the Capitol Building, beginning at 5:30 p.m. The Kootenai Tribe agreed to make the presentation on tribal history and culture. Mitch Silvers from Senator Crapo's office will make a presentation to the Council on issues before the United States Senate which affect Indian tribes. Mr. Silvers requested a letter from the Council's Chair or Vice-Chair as to specific topics which he is to address. Legislative Services Office will seek to obtain reliable information on the amount of forgone tax revenues due to non-taxation of tobacco and fuels sold on Indian Reservations. Mr. Penney suggested that relevant information is available on the Governor's website. Chairman Jorgenson asked the tribes if they could come up with such information from the tribes' perspective. Mr. Penney thought that there was such information based on a University of Idaho study. Also to be discussed at the March 8th meeting is the effort to create an Indian Education Coordinator Office in the Education Department. Mr. Giles noted

that JFAC is currently setting the budget and that the tribes need to get letters in support to JFAC as soon as possible.

Addendum 1: Presentation by Rebecca A. Miles

Addendum 2: Law review article by Mary Christina Wood, referred to in the above minutes on page 3 by Rebecca A. Miles in her presentation